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By U.S. Mail and Email
Secretary of State Alex Padilla
1500 11th Street
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secretary.padilla@sos.ca.gov

Dear Secretary of State Padilla:

I am writing on behalf of my client *The Sacramento Bee* (hereafter "*Bee*") in response to the November 30, 2018 email sent by your Constituent Affairs department to *Bee* reporter Bryan Anderson.

The response states that an unspecified number of documents have been withheld. It says the documents withheld are pursuant to the attorney-client privilege "and other documents reflecting the deliberative process and official information," along with "records that reflect the candid evaluations and exchange of ideas that assist the decision-makers in making their final policy and other executive decisions." It cites a number of statutes, most of which do not in any way justify non-disclosure.

The burden is upon the agency withholding records to justify non-disclosure. *International Federation of Professional and Technical Engineers Local 21 v. Superior Court* (2007) 42 Cal. 4th 319, 329. Exemptions from disclosure are narrowly construed, and the right of access is broadly construed.

The assertion that records are being withheld pursuant to the "deliberative process" and "official information" privileges is especially problematic. These are conditional and only apply when the interest in non-disclosure "clearly outweighs" the interest in disclosure. *Citizens for Open Government v. City of Lodi* (2012) 205 Cal. App. 4th 296; *Marylander v. Superior Court* (2000) 81 Cal. App. 4th 1119. The *Citizens for Open Government* case held that the agency had not met its burden of justifying non-disclosure with vague assertions of "deliberative process," as did *Marylander*. Moreover, as the Court of Appeal held in *American Civil Liberties Union v. Superior Court* (2011) 202 Cal. App. 4th 55, the agency

must show that any communications being withheld are truly "pre-decisional." It is not at all clear here that any true "decisions" were made or that any "final policy" decisions were made.

For example, a communication saying, "WTF, how did that happen?" might be embarrassing to the Secretary of State or others, but it would not be exempt from disclosure. As the Supreme Court stated in the *International Federation* case, the core purpose of the Public Records Act is to uncover "corruption, incompetence, inefficiency, prejudice and favoritism," and seeing how the Secretary of State did or didn't handle registration errors is a matter of intense public interest. The interest in disclosure of records relating to this clearly outweighs any interest in non-disclosure.

The *Bee* requests that the Secretary of State reevaluate its position and disclose any withheld records (with the possible exception of true attorney-client communications) within seven days of the date of this letter, and provide a log of any withheld documents within that same time period. As you are no doubt aware, the prevailing requester in any Public Records Act litigation, should that be necessary, is entitled to recover its attorney's fees pursuant to Government Code section 6259(d).

If you have any questions, do not hesitate to give me a call.

Sincerely,

CANNATA, O'TOOLE, FICKES & OLSON LLP

KARL OLSON

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